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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/634,877	08/06/2003	Ikuo Matsukura	241197US0	8215
22850	7590	11/16/2004		EXAMINER
OBLON, SPIVAK, MCCLELLAND, MAIER & NEUSTADT, P.C. 1940 DUKE STREET ALEXANDRIA, VA 22314			ZACHARIA, RAMSEY E	
			ART UNIT	PAPER NUMBER
			1773	

DATE MAILED: 11/16/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

VV

<b>Office Action Summary</b>	Application No.	Applicant(s)
	10/634,877	MATSUKURA ET AL.
	Examiner Ramsey Zacharia	Art Unit 1773

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on 21 October 2004.
- 2a) This action is **FINAL**.                            2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 1-21 is/are pending in the application.
  - 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) Claim(s) \_\_\_\_\_ is/are allowed.
- 6) Claim(s) 1-21 is/are rejected.
- 7) Claim(s) \_\_\_\_\_ is/are objected to.
- 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on 06 August 2003 is/are: a) accepted or b) objected to by the Examiner.
 

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
  - a) All    b) Some \* c) None of:
    1. Certified copies of the priority documents have been received.
    2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
    3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

1) <input type="checkbox"/> Notice of References Cited (PTO-892)	4) <input type="checkbox"/> Interview Summary (PTO-413)
2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)	Paper No(s)/Mail Date. _____.
3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date _____.	5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)
	6) <input type="checkbox"/> Other: _____.

**DETAILED ACTION**

1. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

***Claim Rejections - 35 USC § 102***

2. Claims 1-5, 8-12, and 15-19 are rejected under 35 U.S.C. 102(b) as being anticipated by Matsukura et al. (US 2001/0024701 A1).

Matsukura et al. teach a pellicle for a photolithographic patterning process by means of a light having a wavelength of at most 180 nm comprising a fluorine-containing polymer (paragraph 0010). In the embodiment of Example 6, a pellicle is constructed with a membrane of polymer A and an adhesive of adhesive A (paragraphs 0093-0094). Polymer A and adhesive A are both formed from the same polymer, an alicyclic polymer of  $\text{CH}_2=\text{CHCF}_2\text{CF}_2\text{OCF}=\text{CF}_2$  having a glass transition of 90 °C and a refractive index of 1.36 (paragraph 0079-0080). This polymer appears to be the same as that of Example 5 in the instant application. Therefore, it should inherently have substantially no signals appearing on the higher magnetic field side than 2.8 ppm since the polymer of instant Example 5 has no distinct signals on the higher magnetic field side than 2.8 ppm.

***Claim Rejections - 35 USC § 102 / 103***

3. Claims 6, 7, 13, 14, 20, and 21 are rejected under 35 U.S.C. 102(b) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over Matsukura et al. (US 2001/0024701 A1).

Matsukura et al. teach all the limitations of claims 6, 7, 13, 14, 20, and 21, as outlined above, except for (a) specifying that the fluoropolymer is polymerization at a temperature of at most 15 °C and (b) specifying that the fluoropolymer is formed by fluorinating a preformed polymer. However, these limitations are product-by-process limitations.

When the prior art discloses a product which reasonably appears to be either identical with or only slightly different than a product claim in a product-by-process claim, the burden is on the applicant to present evidence from which the examiner could reasonably conclude that the claimed product differs in kind from those of the prior art. *In re Brown*, 459 F. 2d 531, 173 USPQ 685 (CCPA 1972); *In re Fessman*, 489 F. 2d 742, 180 USPQ 324 (CCPA 1974). This burden is NOT discharged solely because the product was derived from a process not known to the prior art. *In re Fessman*, 489 F. 2d 742, 180 USPQ 324 (CCPA 1974). Furthermore, the determination of patentability for a product-by-process claim is based on the product itself and not on the method of production. If the product in the product-by-process claim is the same or obvious from a product of the prior art, the claim is unpatentable even though the prior product was made by a different process. *In re Thorpe*, 227 USPQ 964, 966 (Fed. Cir. 1985) and MPEP § 2113. Regarding claims 6, 13, and 20, the temperature at which the polymerization occurs appears to affect the rate of polymerization but not the final product, particularly since the temperature used by Matsukura et al. is 18 °C, only 3 degrees higher than the disclosed range.

Regarding claims 7, 14, and 21, the final product appears to be identical regardless of whether some of the fluorine is added after polymerization, particularly since the fluoropolymer of claims 7, 14, and 21 is fluorinated such that it becomes the same as fluoropolymer (A).

*Response to Arguments*

4. Applicant's arguments filed 21 October 2004 have been fully considered but they are not persuasive.

The applicants argue that Polymer A of Matsukura et al. does not inherently have at most 6 mol% of hydrogen atom signals appearing on the magnetic field side higher than 2.8 ppm. To support this position, a Declaration under 37 CFR 1.132 was presented purporting to show that the hydrogen signal observed on the magnetic field higher than 2.8 ppm of the fluoropolymer of Matsukura et al. is 6.4 mol%.

This is not for the following reasons. The declaration under 37 CFR 1.132 filed 21 October 2004 is insufficient to overcome the rejection of claims 1-21 put forth above because it appears that the polymer tested in the declaration may not be the same as Polymer A of Matsukura et al. The conversion of monomer to polymer in Matsukura et al. is 50% while in the declaration it is about 94%. This raises doubts as to whether or not the polymer tested in the declaration is in fact the same as Polymer A of Matsukura et al. This difference may be the result of different monomer:solvent ratios, different monomer:initiator ratios, and/or different polymerization temperatures (18-20 °C versus 18 °C in Matsukura et al.). In any event, the difference in conversion between Polymer A of Matsukura et al. and the polymer of the declaration cast significant doubt as to whether these two polymers are the same. Consequently,

it cannot be concluded that the NMR spectrum of the polymer in the declaration corresponds to the NMR spectrum of Polymer A of Matsukura et al.

***Conclusion***

5. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

6. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Ramsey Zacharia whose telephone number is (571) 272-1518. The examiner can normally be reached on Monday through Friday from 9 to 5.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Deborah Jones, can be reached on (571) 272-1535. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications

may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



**Ramsey Zacharia**  
**Primary Examiner**  
**Tech Center 1700**